



## TERMS AND CONDITIONS OF SALE

“Seller” shall mean Stratus Products a division of Structural & Steel Products Inc. By purchasing products and/or materials (the “Products”) from Seller, Buyer confirms that the following terms and conditions apply to Buyer’s purchase of Seller’s Products.

### I. PRICES/PAYMENT

- A. All prices by Seller are payable in U.S. dollars. Prices are subject to change without notice.
- B. Prices quoted are subject to receipt and acceptance of order within 30 days of the quotation. Seller has the sole and final authority with respect to the issuance of all quotations, bids, and price schedules, and the acceptance of all contracts and orders.
- C. Payment will be due within 30 days of the invoice date. All indebtedness past due shall bear interest based on the New York Prime interest rate (Chase Manhattan Bank, N.A.) plus one and one half percent (1 1/2%) per month (18% per annum) or the maximum lawful rate, whichever is less. Nothing herein shall be deemed to extend or otherwise modify Purchaser’s obligation to make payment when due.
- D. Seller reserves the right to place Purchaser on credit hold when any invoice has not been paid in full forty-five (45) days after invoice date. The credit hold will apply to existing pending shipments and to all affiliates of Purchaser. Seller may in its sole discretion require any purchase be made via prepaid or C.O.D. In the event of Purchaser default, Purchaser agrees to pay Seller reasonable attorney’s fees and other reasonable costs of collection.

### II. FREIGHT, ROUTING HANDLING AND STORAGE, TITLE AND RISK OF LOSS, PRODUCT SELECTION, DELIVERY

- A. All quotations are freight allowed F.O.B. Seller’s factory to destinations within the Continental United States. Exception: Anchor bolts and template pre-shipments are shipped at the expense of, and invoiced to, the Purchaser (prepaid and add). Any re-consignment, redelivery or storage expenses are the sole responsibility of the Purchaser.
- B. Routing is determined by the Seller, with delivery to a common carrier delivery point nearest to destination. Handling, unloading, storage, extra labor or mechanical facilities, and movement from the shipping destination to Purchaser’s jobsite are the responsibility of Purchaser.
- C. Title transfers once product leaves the Seller’s factory. All risk of loss or damage is the responsibility of the Purchaser. Acceptance of product is required after inspection by the Purchaser or Purchasers representative at delivery point. Purchaser agrees to accept product per Sellers Terms and Conditions within two (2) days after the delivery. In the event Purchaser feels product is not in compliance with purchase order, Purchaser must provide written notification to Seller

detailing suspected noncompliance. Failure to provide notification within the required two (2) days will constitute irrevocable product acceptance by the Purchaser. Issues not reasonably discovered by inspection are exempt from the two (2) day notification. Purchaser’s sole remedy for handling any product defects or nonconformance is provided for in the Sellers Warranty.

- D. Purchaser accepts all responsibility and/or liability for issues that occur due to improper selection of products for the application, including, but not limited to, electrical, service, jobsite, geological, or topographical conditions. For design or stress loading applications such as, but not limited to, overhead wiring, guying of structure, structure mounted banner attachments, or other field installed attachments, consult the Seller for respective design analysis, and accepted acknowledgment.
- E. Delivery/Shipment dates are approximate and are provided as an estimate by Seller. Under no circumstances are these dates deemed to represent fixed or guaranteed shipping dates. Partial shipments are permitted.

### III. EXCUSABLE DELAYS

Seller will not be responsible if Seller cannot perform under this agreement if events beyond Seller’s reasonable control occur which make it impossible or commercially unreasonable for Seller to perform, including so-called “Acts of God” events. In the event of any such delay in performance, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

### IV. TAXES

Seller’s prices do not include sales, use, excise, value added, or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise, value added or other similar tax applicable to the sale of the products hereunder shall be paid by Purchaser or in lieu thereof Purchaser shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.

### V. LIMITED WARRANTY

- A. **Seller warrants its products for one year. This warranty shall be the only warranty that applies. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY EXPRESSLY DISCLAIMED BY SELLER.**
- B. Seller warrants its products shall be free from defects in materials and workmanship. The Seller will manufacture its Products according to Purchasers approved submittals if Purchaser has given, in its entirety, an original approved stamped copy of the Submittal which has been approved by the Owner, or Owner’s Representative.

C. If any product does not meet the above warranty during the warranty period Purchaser shall promptly notify Seller in writing and then make the products available to Seller promptly. Seller shall thereupon correct such defect by (at Seller's option) (i) replacing the defective product or part thereof (f.o.b. Seller's plant or other point of shipment, with freight allowed to destinations within the continental United States), (ii) repairing the defective product or part thereof, or (iii) refunding the depreciated price thereof. Only the cost of the replacement product shall be covered by this warranty and all labor, whether performed by Seller or otherwise shall be at Purchaser's cost.

D. Seller's liability to Purchaser on any claim of any kind, including negligence, for any loss or damages arising out of, connected with, or resulting from the sale of any product, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, inspection, repair, operation or use of any product shall in no case exceed the price allocable to the product or part thereof which gives rise to the claim and shall terminate one (1) year after the date of Seller's invoice for the product.

E. **IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING ALLEGED NEGLIGENCE) OR OTHERWISE SHALL SELLER BE LIABLE TO PURCHASER FOR LIQUIDATED, SPECIAL, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCTS FURNISHED OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, COST TO REPAIR OR REPLACE THE PRODUCTS (EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN), DOWNTIME COSTS, OR CLAIMS OF SUPPLIERS OR CUSTOMERS OF PURCHASER FOR SUCH DAMAGE OR ANY LIQUIDATED, SPECIAL OR CONSEQUENTIAL DAMAGES.**

F. The foregoing shall constitute the sole remedy of Purchaser and the sole liability of Seller with regard to warranty. Seller makes no other warranty, statutory or otherwise, and none is to be implied. In the event the terms contained in any purchase order with respect to products conflict or are inconsistent with the terms hereof, such inconsistent terms shall not be binding upon Seller. **IN PARTICULAR, WITHOUT LIMITING THE FOREGOING, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS MADE OR IS TO BE IMPLIED.**

## **VI. CANCELLATION/TERMINATION FOR DEFAULT**

A. Purchaser may not cancel an order after shipment by Seller. Purchaser may cancel an order prior to shipment only upon written notice to Seller and payment of Seller's cancellation and/or restocking charges. Cancellation charges include all expenses incurred including engineering and any commitments made by Seller pursuant to the execution of the customer order.

B. If, in the judgment of Seller, the financial condition of Purchaser does not justify continuance of production or delivery on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event of bankruptcy or insolvency of Purchaser or in the event any proceeding is brought by or against Purchaser under

bankruptcy or insolvency laws, Seller shall be entitled to terminate this agreement and/or cancel any order or part thereof then outstanding without liability to Purchaser and shall receive reimbursement for its cancellation charges.

## **VII. RETURNED GOODS**

Specific written request must be made in advance by Purchaser to obtain credit or replacement on goods returned. The authorization to return goods will be at the sole discretion of Seller and only upon written notice to Purchaser from an Officer of Seller. On goods accepted for return, Purchaser must prepay 100% of the return shipment expense and pay a minimum restocking charge of thirty-five percent (35%) plus any charges necessary to rework goods to re-sellable condition. Seller reserves the right to reject, in entirety, any return request.

## **VIII. JOB SITE VISIT TERMS**

Job site visits by the Seller personnel to assist with installation must be prearranged with the Seller a minimum of two (2) weeks in advance (if the job site is within the Continental United States or a minimum of thirty (30) days in advance (if the job site is outside the Continental United States). The Purchaser will receive a written confirmation of the scheduled visit once travel arrangements have been secured and purchased by the Seller. If the Purchaser changes the job visitation itinerary after confirmation, any additional expenses incurred by the Seller will be invoiced to the Purchaser.

## **IX. GENERAL**

Seller may change without notice any feature of its published specifications in order to promote production improvement and/or allow for materials availability. The contract of the sale of goods between the Seller and Purchaser shall be performed in Tarrant County, Texas. Any representation, affirmation of fact and course of dealings, promise or condition in connection therewith or usage of trade not incorporated herein, shall not be binding on either party. No waiver, alteration to modification of any of the provisions hereof shall be binding upon the Seller unless specifically assented to in writing by an officer of the company. The validity, performance, and all matters relating to the interpretation and effect hereof and any amendment hereto shall be governed by the laws of the State of Texas. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, taking place in Tarrant County, Texas. Judgment of the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties also expressly agree that they will cooperate in the exchange of documents and lists of witnesses (including any experts) before the arbitration as well as interviewing or deposition of witnesses. The prevailing party in any arbitration shall be entitled to recovery of its expenses incurred in enforcing their Terms and Conditions.

### **AUTHORITY:**

The person signing on behalf of Purchaser represents and warrants to Seller that such person is an authorized agent of Purchaser, with full power and authority to enter into the agreement defined by these Terms and Conditions.

These Terms and Conditions supersede any previous issues.